

SEPTEMBER 5, 2006

RULE PROPOSALS

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Proposed Amendments: N.J.A.C. 5:23-6.3 and 6.22 and 5:70-1.5, 4.3 and 4.7

Uniform Construction Code; Uniform Fire Code

Fire Suppression Systems in Nursing Homes

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124 and 198.

Calendar: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-283.

Submit written comments by November 4, 2006 to:

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Summary

These proposed amendments require the installation of automatic sprinkler protection throughout all existing nursing homes.

Under the New Jersey Uniform Construction Code, N.J.A.C. 5:23, newly-constructed nursing homes have been required to have automatic sprinkler systems throughout since 1991. However, the retrofit requirements of the Uniform Fire Code, N.J.A.C. 5:23-4.7, give an exception from the sprinkler requirement for existing nursing homes that are constructed of noncombustible materials.

There were two fatal nursing home fires in 2003: one in Hartford, Connecticut in which 16 residents died and one in Nashville, Tennessee resulting in 15 deaths. Both of these homes were constructed of noncombustible materials and did not have sprinkler systems, a situation allowed under current New Jersey law. In the aftermath of these fires, both states passed laws requiring all nursing homes to install sprinkler systems. Virginia also moved to require sprinklers in all nursing homes following a 1989 fire in which 12 residents died.

A National Fire Protection Association (NFPA) analysis of data from 1994-1998 shows that there were 10.8 deaths per 1,000 fires in nursing homes without sprinklers versus 1.9 deaths per 1,000 fires in facilities with sprinklers. This represents an 82 percent reduction in deaths per 1,000 fires when automatic suppression systems were present. In July 2004, the Government Accountability Office (GAO) issued a report on nursing home fire safety. This report was prepared in response to the fatal fires mentioned above. The GAO report begins its findings by pointing out that "sprinklers are considered to be the single most effective fire protection feature" and that "there has never been a multiple-death fire in a fully sprinklered nursing home."

The 2006 edition of the NFPA 101, the Life Safety Code, includes a change to require suppression throughout all existing nursing homes. The Federal agency responsible for setting nursing home safety standards, the Centers for Medicare and Medicaid Services (CMS), is required by law to adopt NFPA 101. It is not known when the CMS will move to adopt this most recent edition of the Life Safety Code. However, given the vulnerability of the residents of nursing homes, and the

compelling evidence in support of this requirement, the Department has decided not to delay in the adoption of a requirement for the installation of sprinkler systems in all existing nursing homes. The proposed addition of a new paragraph N.J.A.C. 5:70-4.3(a)4 makes it clear that the requirement for a suppression system will apply regardless of whether the nursing home was required to have a suppression system at the time that it was constructed. Additionally, a correction has been made at N.J.A.C. 5:23-4.3(a) to list paragraphs (a)2 through (proposed new) 4 as instances where compliance with the retrofit requirements of the Uniform Fire Code is required regardless of whether the building complies with the fire safety requirements of the Uniform Construction Code in effect at the time of its construction.

The proposed amendment to N.J.A.C. 5:70-4.7(c) contains a requirement for the installation of automatic sprinkler systems in existing nursing homes. The proposed amendment eliminates the exception for nursing homes of noncombustible construction. It also states that nursing home owners will have three years from the effective date of this amendment to bring their facilities into compliance.

The proposed amendment at N.J.A.C. 5:70-1.5 removes the reference to nursing homes in the definition of the Use Group I-1 under the “‘Use’ or ‘Use Group’” definition in the Uniform Fire Code and adds a definition of the term “nursing home.”

Companion amendments to the rehabilitation subcode of the Uniform Construction Code are proposed at N.J.A.C. 5:23-6.3 and 6.22 to add a definition of the term “nursing home” and to require that automatic suppression systems be installed throughout the work area in nursing homes undergoing reconstruction.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments are expected to have a positive social impact. Nursing home residents are more vulnerable to fire and smoke because many of them are non-ambulatory. The installation of automatic fire sprinkler protection will increase fire and life safety within these facilities.

Economic Impact

The proposed amendments may have a significant economic impact on some nursing homes. The cost of installing an automatic sprinkler system in an existing facility varies depending on the size and type of construction of the facility. However, the floor plan of most nursing homes will lend itself to the installation of a sprinkler system. Based on a survey conducted by the Department of Health and Senior Services in 2004, it is estimated that 50 to 60 nursing homes will be impacted by this requirement. The proposed amendments give the owners of these nursing homes three years to comply with the requirement to install sprinkler systems.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendments are not being proposed pursuant to Federal law or in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements. (See Summary above for a discussion of the Federal requirements for nursing home fire safety.)

Jobs Impact

The Department does not anticipate the creation or loss of any jobs as a result of these proposed amendments.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have any impact on the

agricultural industry.

Regulatory Flexibility Analysis

The proposed amendments would not impose any new recordkeeping or reporting requirements on “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments require the installation of automatic sprinkler systems in existing nursing homes, some of which may be small businesses as defined by the Act. Compliance costs are discussed in the Economic Impact above. Most, if not all, nursing homes needing to install automatic sprinkler systems will have to hire professional contractors to do so. The costs of such installation will vary considerably based on the contractor selected and the extent of the installation to be undertaken. Because these rules are proposed to enhance life safety for nursing home residents, no differential treatment of small businesses is appropriate.

Smart Growth Impact

The Department does not anticipate that the proposed amendments would have any impact upon either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-6.3 Definitions

The words and terms used in this subcode shall have the following meanings unless the context clearly indicates otherwise. Any term not defined herein which is defined in any of the other subcodes of the Uniform Construction Code shall have the meaning as defined in that subcode. Where a term is defined in this subcode and is also defined in another subcode, then the term shall have the meaning as defined herein wherever it is used in this subcode.

...

“Nursing home” means a building used for nursing or custodial care on a 24-hour basis for more than five persons where evacuation is impractical (a group that, even with staff assistance, cannot reliably move to a point of safety in a timely manner) as defined in Section 22-1.3 of NFPA 101-97. This shall include intermediate care facilities, skilled nursing facilities and long term care facilities.

...

5:23-6.22 Basic Requirements—Groups I-2 and I-4

(a) Automatic Sprinkler System: An automatic sprinkler system shall be installed throughout the work area.

1. Exception: Automatic sprinklers shall not be required in buildings of Type 1 or Type 2A construction of any height or of Type 2B construction not over one story in height. **This exception shall not apply to nursing homes.**

2. Exception: Automatic sprinklers shall not be required in day care centers with an occupant load of 100 or less where all the children under 2 ½ years of age are cared for on the first floor and in which each child care room [as] **has** an exit door directly to the exterior. (Fire)

(b)-(r) (No change.)

5:70-1.5 Definitions

The following terms shall have the meaning indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c. 383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...

“Nursing home” means a building used for nursing or custodial care on a 24-hour basis for more than five persons where evacuation is impractical (a group that, even with staff assistance, cannot reliably move to a point of safety in a timely manner) as defined in Section 22-1.3 of NFPA 101-97. This shall include intermediate care facilities, skilled nursing facilities and long term care facilities.

...

“Use” or “Use Group” means the use to which a building, portion of a building, or premises, is put, as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, that is used for human purpose or occupancy that would subject it to the provisions of this Code if it were a building or premises.

1.-10. (No change.)

11. “Use Group I-1”: This Use Group shall include buildings housing six or more individuals who, because of age, mental instability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Included in this group are uses such as facilities for children, aged persons, mentally impaired and convalescents including: convalescent facilities, group homes, homes for the aged, mentally retarded care facilities, [nursing homes (ambulatory),] orphanages and residential care facilities. Occupancies such as the above with five or less occupants shall be classified as a residential Use Group.

12.-20. (No change.)

5:70-4.3 Relationship to Uniform Construction Code

(a) A building in full compliance with the subcodes adopted pursuant to the Uniform Construction Code Act and regulations in force at the time of its construction and possessing a valid certificate of occupancy shall not be required to conform to the more restrictive requirements established by this subchapter except as may be required by [(a)3] **(a)2 through 4** below.

1.-3. (No change.)

4. The requirements of N.J.A.C. 5:70-4.7(c) shall apply to all nursing homes, as defined in this Code, unless the provisions of (b) below are applicable.

(b) (No change.)

5:70-4.7 Fire suppression systems

(a)-(b) (No change.)

(c) All buildings of Use Group I-2 or portions thereof when separated in accordance with (1) below shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. (No change.)

2. Within three years of the effective date of this amendment, all nursing homes shall be equipped throughout with an automatic fire suppression system installed in accordance with the

New Jersey Uniform Construction Code. The exception contained in (c)1i above shall not apply to nursing homes.

(d)-(1) (No change.)